

concept. *Wright v. Vogt*, 7 N.J. 1 (1951). It is not the meaning of isolated words, but the internal sense of the law, the spirit of the correlated symbols of expression, that we seek in the exposition of a statute. The intention emerges from the principle and policy of the act rather than the literal sense of particular terms, standing alone. *Caputo v. Best Foods, Inc.*, 17 N.J. 259 (1955). * * *

Further, it should be noted that the powers conferred upon an agency or commission include not only those expressly granted but also those which, by necessary or fair implication, are incidental to a full effectuation of the legislative intent in the light of the purposes for which the agency or commission was created. *Rosenthal v. State Employees' Retirement System of New Jersey*, 30 N.J. Super. 136, 142 (App. Div. 1954); *Application of Waterfront Commission of New York Harbor*, 39 N.J. Super 33, 39 (Law Div. 1956)

Keeping in mind these settled rules of statutory construction, it is our opinion that the activities of the Interstate Sanitation Commission, in its study of smoke and air pollution, are not to be limited to the physical areas of the waters of the Interstate Sanitation district. The evident legislative intent is to require studies of smoke and air pollution which affect the territory served by the Commission. By the express language of Chapter 46 of the Laws of 1955, "the study shall include a survey of the sources and extent of such pollution". Obviously the Commission is not to be limited to the physical areas of the waters of the district.

The problems with which the Interstate Sanitation Commission is to be concerned in its study are those existing in the areas of the States of New Jersey and New York which it serves. How far the Commission will have to go to properly evaluate the sources and causes of interstate smoke and air pollution is a matter for the expert decision of the Commission itself, to be made in the course of its study. It clearly has the implied power to make that determination as well as the power and duty to recommend to the Governors and Legislatures of the states the boundaries of the area to which any proposed interstate control of smoke or air pollution should be limited.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: HAROLD KOLOVSKY
Assistant Attorney General

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OCTOBER 17, 1956

HONORABLE FREDERICK J. GASSERT, JR.
Director of Motor Vehicles
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-33

DEAR MR. GASSERT:

This will acknowledge receipt of your recent communication in which you request our opinion on the following question:

"Does the merger of two or more corporations, one or both of which own motor vehicles, have the effect of transferring the ownership of the motor vehicles under the provisions of Chapter 10 of Title 39 so that the registration of those motor vehicles becomes void under the provisions of R.S. 39:3-30, or if not, is a mere change on the certificate of ownership to the name of the continuing corporation sufficient and permitted by law?"

It is our opinion and you are so advised that where there is a merger of two or more corporations there is not any transfer of title to the motor vehicles owned by the continuing corporation, but there is a transfer of title to the motor vehicles owned by those corporations which are merged into the continuing corporation and such transfer of title must be made in the manner prescribed by the Motor Vehicle Certificate of Ownership Law and upon such transfer the registration of those motor vehicles becomes void under the provisions of R.S. 39:3-30.

The term "merger" means the absorption of one corporation by another which retains its name and corporate identity with the added capital, franchises and powers of the merged corporation. It is the uniting of two or more corporations by the transfer of property to one of them which continues in existence the other being merged therein. 15 Fletcher, *Cyclopedia Corporations* (1938) §7041, p. 8.

The corporation merged into the continuing corporation "will pass out of the picture". *Bingham v. Savings Invest. &c., East Orange*, 101 N.J. Eq. 413 (Ch. 1927) aff'd. 102 N.J. Eq. 302 (E. & A. 1928).

You have indicated to us that it has been contended that the merger of corporations under the General Corporation Act does not contemplate a transfer of ownership of any property of the corporation and consequently no transfer of title should be required other than a change of name on the certificate of ownership.

This contention is apparently based upon a provision of Section 14:12-5 of the Revised Statutes (Corporations, General) which provides :

"When such merger or consolidation is effected, all the rights, privileges, powers and franchises of each of such corporations, both of a public and private nature, all real and personal property, all debts due on any account, as well for stock subscriptions as all other things in action or belonging to each of the corporations, and all and every other interest, shall vest in the consolidated corporation as effectually as they were vested in the several and respective former corporations. * * *"

Whatever effect the aforesaid provision of R.S. 14:12-5 may have on personal property other than motor vehicles, it is evident that it has no application to the transfer of title to a motor vehicle, for the Legislature has prescribed a specific method for transferring title to motor vehicles and these statutory provisions must be complied with strictly. This method differs from that prevailing and required as to other chattels. *Merchants Security Corp. v. Lane*, 106 N.J.L. 169 (E. & A. 1929) re-argument denied 106 N.J.L. 576 (E. & A. 1930); *Eggerding v. Bicknell*, 20 N.J. 106, 112 (1955).

That there is a transfer of title to the motor vehicles owned by the merged corporation subject to the provisions of the Motor Vehicle Certificate of Ownership Law appears indisputable in the light of the following provisions of said law.

N.J.S.A. 39:10-2 provides in part:

"As used in this chapter unless other meaning is clearly apparent from the language or context, or unless inconsistent with the manifest intention of the Legislature:

" * * *

" 'Person' includes natural persons, firms or copartnerships, corporations, associations, or other artificial bodies, receivers, trustees, common law or statutory assignees, executors, administrators, sheriffs, constables, marshals, or other persons in representative or official capacity, and members, officers, agents, employees, or other representatives of those hereinbefore enumerated.

" 'Buyer' includes purchaser, conditional vendee, lessee, bailee, transferee, chattel mortgagor, and any person buying, attempting to buy, or receiving a motor vehicle, under conditional sale contract, lease, bailment, transfer agreement, chattel mortgage, trust receipt or any other form of security or possession agreement, or legal successor in interest.

" 'Seller' includes manufacturer, dealer, lessor, bailor, transferrer, conditional vendor, chattel mortgagee, and any person selling, attempting to sell, or delivering a motor vehicle, under conditional sale contract, lease, bailment, transfer agreement, chattel mortgage, trust receipt or other form of security or possession agreement, or legal successor in interest.

"The term 'sell' or 'sale' or 'purchase' or any form thereof includes absolute or voluntary sales and purchases, agreements to sell and purchase, bailments, chattel mortgages, leases, trust receipts and other forms of security agreement whereby any motor vehicles are sold and purchased, or agreed to be sold and purchased, involuntary, statutory and judicial sales, inheritance, devise or bequest, gift or any other form or manner of sale or agreement of sale thereof, or the giving or transferring possession of a motor vehicle to a person for a permanent use; continued possession for sixty days or more is to be construed as permanent use."

N.J.S.A. 39:10-9 provides (with an exception not here applicable) as follows:

"In all sales after a new motor vehicle is sold by the manufacturer, his agent or a dealer, and in every sale of a used motor vehicle, the seller shall, * * * execute and deliver to the purchaser, in the case of absolute sale, assignment of the certificate of ownership or assignment of bill of sale issued prior to the effective date of this amendment; if other than absolute sale, assignment of the certificate of ownership, subject to contract, or assignment of bill of sale, subject to contract, issued prior to the effective date of this amendment."

Our view in this matter, we believe, is further supported by the holding in the case of *Columbus & Southern Ohio Electric Co. v. West, Registrar* 140 Ohio St. 200, 42 N.E. 2d, 906 (Sup. Ct. 1942), where the Court considered the following question:

When there has been a consolidation under the Ohio General Corporation Act of constituent corporations which have during a given year registered their motor vehicles and paid the motor vehicles license fees thereon, must the consolidated corporation again register the motor vehicles and pay new license fees?

It had been urged upon the Court that by force of the provisions of Section 86:2368 of the General Code, which provided:

"Such consolidated corporation shall be subject to all the liabilities and duties of each of such corporations so consolidated; and all property, real, personal and mixed, and all debts and liabilities due to any of said constituent corporations on whatever account, as well for subscriptions for shares as all other things in action of or belonging to each of such corporations, shall be vested in the consolidated corporation, and all property, rights, privileges, powers, franchises, and immunities and all and every other interest shall thereafter be as fully and effectually the property of the consolidated corporation as they were the property of the several and respective constituent corporations * * * "

the consolidated corporation takes over the license privilege of the constituent corporations and need not make application for new registration or secure new motor vehicle number plates.

In answer to this contention the Court said:

"The above-quoted provisions are part of the General Corporation Act of Ohio. True, they do provide generally for the succession by the consolidated company to the 'privileges' theretofore enjoyed by the constituent companies. But it would, we hold, be a forced construction to interpret these general provisions as controlling the sharp and explicit clauses of Section 6294-1, providing that where there is a 'transfer of ownership' the 'registration * * * shall expire' and further providing that 'it shall be the duty of the original owner to immediately remove such number plates from such motor vehicle.' Before these explicit statutory provisions of Section 6294-1, the general statutory provisions of Section 8623-68 must give way. 37 Ohio Jurisprudence, 413, Section 152; *Leach v. Collins*, 123 Ohio St. 530, 533, 176 N.E. 77."

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: CHARLES J. KEHOE
Ass't Deputy Attorney General

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NOVEMBER 7, 1956

HONORABLE GEORGE C. SKILLMAN
Director, Division of Local Government
Department of the Treasury
Commonwealth Building
Trenton, New Jersey

MEMORANDUM OPINION—P-34

DEAR DIRECTOR:

You have requested our opinion as to whether it is legal for a borough to turn

over to its Shade Tree Commission the funds which have been appropriated for its use, so that said funds may be held by the Commission in its own bank account and disbursed by it.

In our opinion the answer is in the negative. The statute governing Shade Tree Commissions (R.S. 40:64-1, et seq.) contains no authority for the transfer of such funds to the Commission or for their disbursement by that body, and makes no provision for the appointment of a treasurer by the Commission. R.S. 40:64-3 authorizes a three-member Commission to organize annually by the election of one of its members as president, and the appointment of a secretary; no mention is made of a treasurer. R.S. 40:64-11 provides for the appropriation of funds for the use of the Commission, and declares that all sums so appropriated by the governing body shall be "placed to the credit of, and subject to be drawn upon by the Shade Tree Commission for the purposes of its work." Likewise, under R.S. 40:64-13 all monies collected by the Commission either as penalties or as charges against real estate "shall be forthwith paid over to the municipal officer empowered to be custodian of the funds of the municipality, shall be placed to the credit of the Shade Tree Commission of such municipality and be subject to be drawn upon by the Commission for its work".

These provisions clearly indicate, in our opinion, that funds for shade tree purposes are, like most other municipal funds, to be kept in the custody of the municipal treasurer, to be disbursed by him upon warrant or certification by the Commission. We find no reason to read into the foregoing statutes any power in a Shade Tree Commission to hold and disburse funds, or to appoint a treasurer for that purpose.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: THOMAS P. COOK
Deputy Attorney General

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DECEMBER 5, 1956

HONORABLE JOSEPH E. MCLEAN, *Commissioner*
Department of Conservation and Economic Development
State House Annex
Trenton, New Jersey

MEMORANDUM OPINION—P-35

DEAR COMMISSIONER MCLEAN:

You have requested our advice as to what State officer or agency now is vested with the power formerly vested in the Board of Commerce and Navigation by R.S. 12:3-17, to survey tidewaters of the State and to prepare maps of the surveys showing what lines have been fixed and established as exterior lines for solid filling and pier lines to be filed in the office of the Secretary of State.

By Chapter 22, P.L. 1945, the authority of the Board of Commerce and Navigation was transferred to and vested in the Division of Navigation of the State Department of Conservation. Section 29 of Chapter 22 of the Laws of 1945 provided: